

HOUSE BILL 3503

By Dennis

AN ACT to amend Tennessee Code Annotated, Title 23
and Title 29, relative to the financing of certain civil
causes of action.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, is amended by adding the following
as a new chapter thereto:

29-40-101. This chapter shall be known and may be cited as the "Tennessee
Legal Funding Act."

29-40-102. As used in this chapter, unless the context otherwise requires:

(1) "Charges" means the amount of money to be paid to the consumer
legal funding provider by or on behalf of the consumer, in addition to the principal
amount of all proceeds provided to a Tennessee consumer pursuant to this
chapter. Charges include all administrative, origination, underwriting or other
fees no matter how denominated;

(2) "Consumer legal funding provider" or "provider" means a person or
entity that enters into a nonrecourse consumer legal funding transaction with a
Tennessee consumer;

(3)

(A) "Consumer" means a person residing or domiciled in this state
who elects to enter into a transaction under this chapter, whether it be in
person, over the Internet, by facsimile, or by any other means, and who
has a pending legal claim, and is represented by an attorney at the time
such person receives nonrecourse legal funding;

(B) "Consumer" does not include the following:

(i) A bank, lender, financing entity, or other special purpose entity:

(a) That provides financing to a consumer legal funding company; or

(b) To which a consumer legal funding company grants a security interest or transfers any rights or interest in a consumer legal funding transaction; or

(ii) An attorney or accountant who provides services to a consumer;

(4) "Funding date" means the date on which the funded amount is delivered to the consumer by the consumer legal funding provider;

(5)

(A) "Legal claim" means a bona fide civil or statutory claim or action arising out of a personal injury, disability, wrongful death, or workers compensation case.

(B) "Legal claim" does not mean a commercial tort claim as defined in § 47-9-102(a)(13), medical malpractice claims, employment discrimination claims, class action claims, or product liability claims;

(6) "Nonrecourse consumer legal funding" means a transaction in which a consumer legal funding provider purchases and a consumer assigns to the consumer legal funding provider the contingent right to receive an amount of the potential proceeds of a settlement, judgment, award, or verdict obtained in the consumer's legal claim; and

(7) "Resolution date" means the date the amount funded to the consumer plus the agreed upon charges from the legal claim are delivered to the consumer legal funding provider.

29-40-103.

(a) All nonrecourse consumer legal funding transactions shall meet the following requirements:

(1) The contract shall be completely filled in when presented to the consumer for signature;

(2) The contract shall contain a right of rescission, allowing the consumer to cancel the contract without penalty or further obligation if, within ten (10) business days after the funding date, the consumer either:

(A) Returns to the consumer legal funding provider the full amount of the disbursed funds by delivering the consumer legal funding provider's uncashed check to the consumer legal funding provider's office in person; or

(B) Mails, by insured, certified, or registered United States mail, to the address specified in the contract, a notice of cancellation and includes in such mailing a return of the full amount of disbursed funds in the form of the consumer legal funding provider's uncashed check or a registered or certified check or money order; and

(3) The contract shall contain the initials of the consumer on each page.

(b) The contract shall contain a written acknowledgment by the primary attorney representing the consumer in the legal claim that states all of the following:

(1) All the costs and charges have been disclosed to the consumer;

(2) The attorney is being paid on a contingency basis pursuant to a written fee agreement;

(3) All proceeds of the legal claim will be disbursed via either the trust account of the attorney representing the consumer in the legal claim or a settlement fund established to receive the proceeds of the legal claim from the defendant on behalf of the consumer;

(4) The attorney representing the consumer in the legal claim is following the written instructions of the consumer with regard to the nonrecourse consumer legal funding; and

(5) The attorney representing the consumer in the legal claim has not received a referral fee or other consideration from the consumer legal funding provider, nor will the attorney in the future.

(c) In the event that proceeds from the legal claim are paid into a settlement fund or trust, the consumer legal funding provider shall notify the administrator of the fund or trust of any ownership interest in the proceeds arising from the contract for nonrecourse consumer legal funding.

29-40-104. A consumer legal funding provider shall not:

(1) Pay or offer to pay commissions referral fees or other forms of consideration to any attorney, law firm, medical provider, chiropractor, or physical

therapist or any of their employees for referring a consumer to a consumer legal funding provider;

(2) Accept any commissions, referral fees, rebates, or other forms of consideration from an attorney, law firm, medical provider, chiropractor, or physical therapist or any of their employees;

(3) Advertise false misleading information regarding their products or services;

(4) Refer a client or potential client to a specific attorney, law firm, medical provider, chiropractor, or physical therapist or any of their employees; provided, however, if a client needs legal representation, the provider may refer the client to a local or state bar association referral service;

(5) Fail to promptly supply copies of any and all complete agreements to counsel for the consumer;

(6) Attempt to effect waiver of any remedy by way of compensatory or punitive damages that the consumer might otherwise have;

(7) Attempt to effect arbitration or otherwise effect waiver of a consumer's right to trial by jury in a court of competent jurisdiction;

(8) Knowingly provide funding to a consumer who has previously assigned and/or sold a portion of the consumer's right to proceeds from the consumer's legal claim without first making payment to and/or purchasing the prior consumer legal funding provider's entire funded amount and contracted charges. The proceeds of the underlying legal claim shall not knowingly be purchased more than three (3) times after the initial funding;

(9) Receive any right to and will not make any decisions with respect to the conduct of the underlying legal claim or any settlement or resolution thereof,

the right to make those decisions will remain solely with the consumer and the attorney in the legal claim; or

(10) Permit any portion of the funds from the consumer legal funding transaction to be used to pay for litigation costs or attorneys fees either during or after the resolution of the legal claim.

29-40-105. A consumer legal funding provider shall:

(1) Require that the contracted ownership amount to be paid to the consumer legal funding provider be set as a contractually determined amount based upon intervals of time from the funding date through the resolution date and not be determined as a percentage of the recovery from the underlying legal claim; and

(2) For non-English speaking consumers, upon the written request of the consumer or the consumer's attorney, translate the principal terms of the contract in writing into the same language in which the oral negotiations were conducted between the consumer legal funding provider and the consumer. The consumer must sign the translated document containing the principal terms and initial each page, and the translator or lawyer must sign an affirmation confirming that the principal terms have been presented to the consumer in the same language in which the oral negotiations were conducted between the consumer legal funding provider and the consumer and acknowledged by the consumer.

29-40-106. All nonrecourse consumer legal funding contracts shall contain the disclosures specified in this section, which shall constitute material terms of the contract. Unless otherwise specified, the disclosures shall be typed in at least twelve (12) point bold type and be placed clearly and conspicuously within the contract, as follows:

(1) On the front page under appropriate headings, language specifying:

(A) The total amount of funds to be paid to the consumer by the nonrecourse consumer legal funding provider;

(B) An itemization of one time charges;

(C) The total amount to be assigned by the consumer to the consumer legal funding provider, including all charges;

(D) The total dollar amount of the portion of proceeds the consumer legal funding provider has a contingent right to receive via the assignment by the consumer to the consumer legal funding provider, set forth in one hundred eighty day intervals for one thousand ninety five (1,095) days beginning one hundred eighty (180) days after the funding date; and

(E) A disclosure of the semiannual fee for each 180)-day interval;

(2) Within the body of the contract: “Consumer’s Right to Cancellation: You may cancel this contract without penalty or further obligation within ten (10) business days after the funding date.”;

(3) Within the body of the contract: “The consumer legal funding provider agrees that it shall receive no right to and will not make any decisions with respect to the conduct of the underlying civil action or claim or any settlement or resolution thereof and that the right to make those decisions remains solely with you and your attorney in the civil action or claim. [Insert name of the consumer legal funding provider] further agrees that it shall have no right to pursue the legal claim on your behalf.”;

(4) Within the body of the contract, in all capital letters contained within a box which states:

IF THERE IS NO RECOVERY OF ANY MONEY FROM YOUR LEGAL CLAIM OR IF THERE IS NOT ENOUGH MONEY TO SATISFY THE PORTION ASSIGNED TO [INSERT NAME OF CONSUMER LEGAL FUNDING PROVIDER] IN FULL, YOU WILL NOT OWE [INSERT NAME OF CONSUMER LEGAL FUNDING PROVIDER] ANYTHING IN EXCESS OF YOUR RECOVERY; and

(5) Located immediately above the place on the contract where the consumer's signature is required: "Do not sign this contract before you read it completely or if it contains any blank spaces. You are entitled to a completely filled-in copy of the contract. Before you sign this contract, you should obtain the advice of an attorney. Depending on the circumstances, you may want to consult a tax, public or private benefits planning, or financial professional. You acknowledge that your attorney in the legal claim has provided no tax, public or private benefit planning, or financial advice regarding this transaction."

29-40-107.

(a) Any intentional violation of this chapter, including a violation of any of the required contractual provisions of this chapter, shall be an unfair, false, misleading, and deceptive act or practice in the conduct of trade or commerce in violation of § 47-18-104.

(b) In addition to any rights conferred by subsection(a), a willful violation of this chapter shall be punishable by a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) per violation.

(c) Nothing in this chapter shall be construed to restrict the exercise of powers or the performance of the duties of the attorney general, which the attorney general is authorized to exercise or perform by law.

(d) If a court determines that a consumer legal funding provider has intentionally violated this chapter, the consumer legal funding provider shall only be entitled to recover the principal amount provided to the consumer and not any additional fees.

29-40-108.

(a) The contingent right to receive an amount of the potential proceeds of a legal claim is assignable by a consumer and that assignment is valid only for the purposes of entering into a non-recourse consumer legal funding transaction with a consumer legal funding provider.

(b) Nothing contained in this chapter shall be construed to cause any nonrecourse consumer legal funding transaction conforming to this chapter to be deemed a loan or to be subject to any of the provisions governing loans contained in this code.

(c) Any attorney's lien, medicare lien, TennCare lien, valid health care provider lien, as defined in § 47-9-102(a) against the consumer's legal claim shall take priority over any lien of the consumer legal funding provider. All other liens shall take priority by normal operation of law.

(d) After the resolution date and once proceeds from the settlement are available to distribute, if insufficient proceeds remain to pay the consumer legal funding provider the funding amount and charges after all reductions of other liens arising from the consumers' underlying legal claim have been applied and confirmed in writing, the consumer legal funding provider and the consumer, or the consumer's attorney shall negotiate in good faith to determine a reasonable reduced amount to satisfy payment under the contract. The consumer legal funding provider shall deem the payment under the contract satisfied when the

consumer signs and remits to the consumer legal funding provider a mutual release and the agreed-on payment amount from the consumer or the consumer's attorney.

(e) An attorney or law firm representing the consumer in the legal claim shall not have a financial interest in the consumer legal funding provider offering consumer legal funding to that consumer.

(f) No communication between the consumer's attorney in the legal claim and the consumer legal funding provider as it pertains to the nonrecourse consumer legal funding contract shall limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work-product doctrine and the attorney-client privilege.

29-40-109.

(a) A consumer legal funding company may not assess fees for any period exceeding one thousand ninety five (1,095) days from the funding date with the consumer.

(b) Fees assessed by the consumer legal funding company shall compound at least semiannually but shall not compound based on any lesser time period.

(c) In calculating the fee to the consumer, a consumer legal funding company shall include all charges payable directly or indirectly by the consumer and shall compute the rate based only on funded amounts actually received by a consumer from the nonrecourse consumer legal funding company.

SECTION 2. This act shall take effect on July 1, 2012, the public welfare requiring it.